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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,089	05/25/2007	Yasuaki Fujita	Q96241	4020
23373	7590	11/12/2009	EXAMINER	
SUGHRUE MION, PLLC			STORMER, RUSSELL D	
2100 PENNSYLVANIA AVENUE, N.W.				
SUITE 800			ART UNIT	
WASHINGTON, DC 20037			PAPER NUMBER	
			3617	
			NOTIFICATION DATE	
			DELIVERY MODE	
			11/12/2009	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@SUGHRUE.COM

PPROCESSING@SUGHRUE.COM

### Office Action Summary

**Application No.**

10/588,089

**Applicant(s)**

FUJITA, YASUAKI

**Examiner**

Russell D. Stormer

**Art Unit**

3617

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5, 7-9, and 11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 October 2009 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/808)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter.

The specification does not positively describe the tracker roller as having "at least two different diameters" as set forth in claim 11. The surfaces 21a and 21b as shown in figure 5 are mentioned on page 11 of the specification, but their relative diameters are not described.

See 37 CFR 1.75(d)(1) and MPEP § 608.01(o).

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 11 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The limitation of the outer surface of the tracker roller having "at least two different diameters" is not set forth in the original disclosure and is therefore considered to be new matter.

The original drawings do show the two surfaces 21a and 21b as having different diameters, and original claim 7 does define a stepped portion on the outer surface of the tracker roller, providing support for the tracker roller having *two* different diameters. The limitation of *at least two* different diameters in claim 11 limits the outer surface to having two or more different diameters, such as three or four or five diameters, and the disclosure as originally filed provided support for only two diameters.

This is a new matter rejection.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim is not clear as to what would be considered to be the outer surface of the tracker roller. Line 2 merely recites "an outer surface of the tracker roller" comes into contact with the inner surface of the crawler. In the last paragraph of the claim there is no defined relationship between the "at least two different diameters" and the outer surface of the tracker roller, and the claim is indefinite as to how the "at least two different diameters" affect the contact area such that it is only 30% to 70% of the area of the outer surface of the tracker roller.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Slemmons.

Slemmons (newly cited) discloses a coreless endless track comprising an outer surface and an inner surface having a plurality of rubber projections 26 formed on the ribs 18, 19, and main cords 30, 31. As shown in figure 4 the outer surface of the tracker roller 14 straddles the projections and comprises at least two different diameters such that a contact area is approximately 50%-60% of the outer surface of the roller.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Inaoka et al (previously cited).

Inaoka et al discloses an endless track and roller assembly comprising a crawler having an outer surface and an inner surface having a plurality of rubber projections 12. As shown in figure 4, a tracker roller 3 straddles the projections, and has an outer surface (including the center portion) which comprises at least two different diameters such that a contact area is approximately one-half of the total outer surface of the roller. While the roller 3 is disclosed as being a drive wheel, it is considered to be a "tracker roller" as such is broadly recited in the claim.

The crawler is not disclosed as having main cord rows embedded in the rubber body, but it is well-known in the art to embed cords or wires or cables longitudinally within the rubber body of an endless track to prevent the track from stretching during use. It would have been obvious to embed main cord rows in the rubber body of Inaoka et al in order to resist tension in the track and prevent the track from stretching during use.

#### ***Allowable Subject Matter***

Claims 1-5 and 7-9 are allowable over the prior art of record.

***Response to Arguments***

Applicant's arguments filed September 30, 2009 have been fully considered but they are not persuasive.

The arguments with respect to claim 11 are noted, but the limitations of the outer surface are broad enough to be rejected by Inaoka et al and the newly cited Slemmons.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The references show other track and roller assemblies.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Russell D. Stormer whose telephone number is (571) 272-6687. The examiner can normally be reached on Monday through Friday, 9 AM to 4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Russell D. Stormer/  
Primary Examiner, Art Unit 3617